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March 6, 2024

VIA ECF

Hon. Dale E. Ho, U.S.D.J.

U.S. District Court, Southern District of New York
40 Foley Square
New York, NY 10007

Application GRANTED. By **March 11, 2024**, the parties are directed to file on ECF a proposed amended case managing plan and scheduling order using the template found on the Court's web-page: <https://nysd.uscourts.gov/hon-dale-e-ho>.

SO ORDERED.



Dale E. Ho
United States District Judge
New York, New York
Dated: March 7, 2024

Re: *Mbaye et al v. RCI Hospitality Holdings, Inc. et al*
Case No.: 23-cv-02967

Dear Honorable Judge Ho:

This law firm represents Plaintiffs Elhadji Mbaye (“Mbaye”), Modou Diop (“Diop”) Tahirou Diakite (“Diakite”) and Talla Samb (“Samb”, and collectively, the “Plaintiffs”), on behalf of themselves and others similarly situated in the proposed Fair Labor Standards Act (“FLSA”) collective Action, in the above-referenced matter.

This letter is submitted jointly with counsel for Defendants.¹

Pursuant to Your Honor’s Individual Motion Practice Rule 2(e), the instant letter motion respectfully serves to request an extension of the fact discovery deadline of March 25, 2025 to, through and including May 16, 2024. This is the first request of its kind.

The basis of this request is that the parties require additional time to resolve the discovery dispute arising out of Defendants’ boiler-plate objections to Plaintiffs’ discovery requests, and Defendants’ failure to respond to specific requests regarding: (i) the “third party” through whom Defendants allegedly contracted restroom attendants; (ii) Defendants’ communications with Plaintiffs; (iii) class certification and covered employees; (iv) Defendants’ “employer” liability; and (v) Defendants’ enterprise coverage liability. [See Dckt. No. 73]. The parties also require additional time to complete depositions.

Pursuant to Your Honor’s Individual Motion Practice Rule 2(e)(iii), the parties next scheduled appearance before the Court is on April 11, 2024.

Pursuant to Your Honor’s Individual Motion Practice Rule 2(e)(vi), the following is a summary of what discovery has been completed, to-date:

¹ “Defendants” collectively refers to RCI Hospitality Holdings, Inc. (“RCIHH”), Peregrine Enterprises Inc. (d/b/a Rick’s Cabaret New York), RCI 33rd Ventures, Inc. (d/b/a Hoops Cabaret and Sports Bar), 48 West 33rd Street Corp. (d/b/a Hoops Cabaret and Sports Bar), RCI Dining Services (37th Street), Inc. (d/b/a Vivid Cabaret) (collectively, the “Corporate Defendants”), Eric Langan, and Kes Senevi (collectively, the “Individual Defendants”, and with the Corporate Defendants, the “Defendants”).

Discovery Requests

1. On November 27, 2023, Plaintiffs propounded:
 - i. Seven (7) notices of deposition, as to each Defendant;
 - ii. Requests for the production of documents; and
 - iii. Interrogatories.
2. On November 27, 2023, Defendants propounded:
 - i. Requests for the production of documents; and
 - ii. Interrogatories.
3. On January 19, 2023, Defendants propounded:
 - iii. Four (4) notices of deposition, as to each Plaintiff;
4. On February 9, 2024, Plaintiffs propounded:
 - i. One (1) notice of deposition, as to Mostapha Thiam a/k/a Mostapha Diop, *i.e.*, Defendants' employee, and the party through whom Defendants allegedly contracted restroom attendants.

Discovery Responses

1. On January 19, 2024, Defendants produced:
 - i. Responses and objections to Plaintiffs' requests for the production of documents;
 - ii. Responses and objections to Plaintiffs' interrogatories; and
 - iii. Nineteen (19) individual pages of documents consisting of: a three (3) page arbitration agreement, and four (4) four-page "restroom attendant agreements". [See, e.g., Dckt. No. 58-7].
2. On January 26, 2024, Plaintiffs produced:
 - i. Responses and objections to Defendants' requests for the production of documents;
 - ii. Responses and objections to Defendants' interrogatories; and
 - iii. 324 individual pages of bates-stamped documents consisting of bathroom attendant agreements, SEC filings, affidavits signed under penalty of perjury under 28 U.S.C. § 1746, by two (2) of RCIHH's General Managers,

3. On February 27, 2024, Defendants produced:
 - i. 85 individual pages of documents consisting of 77 pages of text messages purportedly between Mostapha Diop & Mohammad Toure, 2 pages of WhatsApp messages purportedly between Oscar Abreau & Ibrihim, and 3 pages of WhatsApp messages purportedly between Sean Kevlin & Ibrihim.
4. On February 29, 2024, Defendants produced:
 - ii. 14 individual pages of documents consisting of: text messages purportedly between Mostapha Diop & Anthony Chin.

Depositions

The parties have not conducted any depositions. On March 1, 2024, Defendants' counsel confirmed that Defendants' 30(b)(6) witnesses and Mostapha Thiam a/k/a Mostapha Diop would be available for their in-person depositions on: March 25, 2024, March 26, 2024, March 27, 2024, March 28, 2024 and March 29, 2024. Plaintiffs' counsel is optimistic that these depositions will proceed in due course.

We thank the Court for its attention to this matter, and are available at the Court's convenience to answer any questions related to the foregoing.

LEVIN-EPSTEIN & ASSOCIATES, P.C.

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